

REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed on June 2, 2006. Claims 1, 5, 6, 10 and 11 have been amended. Claims 4 and 9 have been canceled. Claims 1-3, 5-8 and 10-15 are pending. Reconsideration of the above-identified application, in view of the above amendments and the following remarks, is respectfully requested.

Applicant appreciatively acknowledges that the Examiner has indicated that Claims 12-15 are directed to allowable subject matter. Claim 12 recites, *inter alia*, that a collection syringe is used to collect the contents of any remaining fluid in the pump reservoir before the refilling with the new fluid. Applicant agrees that the use of a collection syringe along with a first syringe and a second syringe in a kit for refilling an implantable pump is neither taught nor suggested by the prior art. Accordingly, Applicant's have amended independent claims 1 and 6 to recite the inclusion of a collection syringe.

Claims 1, 2, 4-7 and 9-11 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,544,519 to Hammarberg et al. ("Hammarberg").

Claims 3 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hammarberg.

As stated above, claims 1 and 6 have been amended to recite that the collection syringe is in selective fluid communication with the second one of the ports. Each independent claim also recites that the second syringe is selectively in fluid communication with a second one of the ports. Thus, the claims make it clear that both the second syringe and the collection syringe are in fluid communication with the second one of the ports. Thus, the collection syringe can be used to collect the contents of any remaining fluid in the pump reservoir, and thereafter, the second syringe can be used to assist with the refilling of the reservoir.

In rejecting dependent claim 4, the Examiner states that Hammarberg's second syringe 16 can serve as a collection syringe and as the second syringe. Applicant's respectfully disagree. Claims 1 and 6 require two separate elements, a collection syringe and a second syringe. Therefore, the Examiner cannot rely on one element to meet the claim limitations for two elements. In addition, in practice, when one is refilling an implantable pump, sterility is a primary concern. If one were to use the same syringe for collecting the contents of the reservoir and for refilling the reservoir, concerns about sterility would certainly be raised. In fact, Hammarberg confirms these concerns by stating in column 4, line 41, that syringe 16 is "a sterile, non-reusable syringe." Thus, one of ordinary skill in the art would not have been motivated to use Hammarberg's syringe 16 as both the collection syringe and the second syringe as Hammarberg expressly teaches against reusing syringe 16.

Independent claim 11 has been amended to make it clear that the recited method is a method to refill a reservoir of an implantable pump. In addition, applicants have made it clear that the last four steps are to be repeated until the pump reservoir is refilled. Namely, the steps of placing the three way stopcock in a first position, drawing fluid from the first syringe into the second syringe, after the drawing fluid from the first syringe into the second

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syringe step, placing the three way stopcock in a second position, and depressing the plunger of the second syringe are repeated as many times as necessary to refill the pump reservoir.

Hammarberg is not directed to a method of refilling a reservoir of an implantable pump. Hammarberg is directed to a method for measuring the flow resistance of a catheter connected to a pump to determine if there is a blockage to flow in the catheter. Thus, Hammarberg fails to teach or suggest a method of refilling a reservoir of an implantable pump as recited in amended Independent claim 11.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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